

Amendment No. 1 to HB1490

Ragan
Signature of Sponsor

AMEND Senate Bill No. 1009*

House Bill No. 1490

by deleting all language after the enacting clause and substituting instead:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following as a new part:

67-4-3301. Part definitions.

As used in this part:

(1) "Corporation" means an entity subject to the excise tax imposed by the Excise Tax Law of 1999, compiled in part 20 of this chapter, or by Section 11 of the Internal Revenue Code of 1986 (26 U.S.C. § 11), as amended, and does not include an entity meeting the definition of "qualified personal service corporations" as defined in Section 448 of the Internal Revenue Code of 1986 (26 U.S.C. § 448), as amended; and

(2) "Doing business in this state" means:

(A) Owning or renting real or tangible personal property physically located in this state;

(B) Having employees, agents, or representatives acting on the corporation's behalf in this state;

(C) Making sales of tangible personal property to purchasers that take possession of the property in this state;

(D) Performing services for customers located in this state;

(E) Performing services in this state;

(F) Earning income from intangible property that has a business situs in this state;

(G) Engaging in regular and systematic solicitation of sales in this state;

(H) Being a partner in a partnership engaged in any of the activities listed in subdivisions (2)(A)-(G) in this state; or

(I) Being a member of a limited liability company engaged in any of the activities listed in subdivisions (2)(A)-(G) in this state.

67-4-3302. Tax disclosure statement required.

The following corporations, if doing business in this state, shall file with the secretary of state the statement described by § 67-4-3303:

(1) All publicly traded corporations, including corporations traded on foreign stock exchanges; and

(2) All corporations for which fifty percent (50%) or more of the corporation's voting stock is owned, directly or indirectly, by a publicly traded corporation.

67-4-3303. Content of tax disclosure statement.

(a) The statement required by § 67-4-3302 must be filed annually in an electronic format specified by the secretary of state no more than thirty (30) days following the filing of the tax return required by this part, or, in the case of a corporation not required to file a Tennessee excise tax return, within ninety (90) days of the filing of the corporation's federal income tax return, including the corporation's inclusion in a federal consolidated return.

(b) The statement must contain the following information:

(1) The name of the corporation and the street address of its principal executive office;

(2) If different from subdivision (b)(1), the name of a corporation that owns, directly or indirectly, fifty percent (50%) or more of the voting stock of the corporation and the street address of the former corporation's principal executive office;

(3) The corporation's four-digit North American Industry Classification System code number;

(4) A unique code number, assigned by the secretary of state, to identify the corporation, which code number must remain constant from year to year; and

(5) The following information reported on or used in preparing the corporation's Tennessee excise tax return filed under the Excise Tax Law of 1999, or, in the case of a corporation included in a consolidated or combined tax return, reported on or used in preparing the consolidated or combined tax return filed under § 67-4-2007, § 67-4-2106(b), or § 67-4-2112, or another provision in the Excise Tax Law of 1999 or the Franchise Tax Law of 1999, compiled in part 21 of this chapter, or, in the case of a corporation not required to file a Tennessee excise tax return under the Excise Tax Law of 1999, the information that would be required to be reported on or used in preparing the Tennessee excise tax return were the corporation required to file such a return:

(A) Total receipts;

(B) Total cost of goods sold claimed as a deduction from gross income;

(C) Taxable income prior to net operating loss deductions or apportionment;

(D) Property, payroll, and sales apportionment factors;

(E) Calculated overall apportionment factor in the state;

(F) Total business income apportioned to the state;

(G) Net operating loss deduction, if any;

(H) Total non-business income and the amount of non-business income allocated to the state;

(I) Total taxable income;

(J) Total tax before credits;

(K) Tax credits claimed, each credit individually enumerated;

(L) Alternative minimum tax, if applicable;

(M) Tax due;

(N) Tax paid;

(O) Amount of tax due paid under protest, if applicable;

(P) Total deductions for management services fees, for rent, and for royalty, interest, license fee, and similar payments for the use of intangible property paid to any affiliated entity that is not included in the consolidated or combined tax return, if any, that includes the corporation, and the names and principal executive office addresses of the entities to which the payments were made;

(Q) The sales factor that would be calculated for this state if the corporation or consolidated group, if applicable, were required to treat as sales in this state sales of tangible personal property to the federal government and sales of tangible personal property shipped or delivered to a customer in a state in which the selling corporation is neither subject to a state tax measured by net income nor could be subjected to such a tax were the state to impose it;

(R) A description of the source of non-business income reported on the return and the identification of the state to which such income was reported;

(S) A listing of all corporations included in a combined or consolidated tax return that includes the corporation, if such a return is

filed, and their state identification numbers assigned under subdivision (b)(4);

(T) Full-time-equivalent employment of the corporation in this state on the last day of the tax year for which the return is being filed and for the three (3) previous tax years;

(U) In the case of a publicly traded corporation incorporated in the United States or an affiliate of the publicly traded corporation, profits before tax reported on the securities and exchange commission form 10-K for the corporation or the consolidated group of which the corporation is a member for the corporate fiscal year that contains the last day of the tax year for which the return is filed;

(V) The property and payroll factors for this state calculated as required by the Uniform Division of Income for Tax Purposes Act as embodied in Article IV of the Multistate Tax Compact and Multistate Tax Commission regulations; and

(W) Accumulated tax credit carryovers, enumerated by credit.

(c) Notwithstanding chapter 1, part 17 of this title to the contrary, the commissioner of revenue, and any officer or employee of the department of revenue, shall provide assistance, tax information as defined in § 67-1-1701, and other information to officers and employees of the office of the secretary of state that is necessary to ascertain the appropriate due dates for the statements and that is otherwise necessary to accomplish and effectuate the purposes of this part.

67-4-3304. Alternative statement option for corporations not required to file tax return.

In lieu of the statement required by § 67-4-3302, a corporation doing business in this state but not required to file a Tennessee excise tax return may elect to file an alternative statement with the secretary of state containing the following information:

(1) The information specified in § 67-4-3303(b)(1)-(4);

(2) An explanation of why the corporation is not required to file a Tennessee excise tax return, which explanation may take the form of checking one (1) or more possible explanations as determined by the secretary of state, in consultation with the commissioner of revenue; and

(3) Identification of which of the following ranges the corporation's total gross receipts from sales to purchasers in this state fell in the tax year for which the alternative statement is filed:

(A) Less than ten million dollars (\$10,000,000);

(B) Ten million dollars (\$10,000,000) or more, but less than fifty million dollars (\$50,000,000);

(C) Fifty million dollars (\$50,000,000) or more, but less than one hundred million dollars (\$100,000,000);

(D) One hundred million dollars (\$100,000,000) or more, but less than two hundred fifty million dollars (\$250,000,000); or

(E) Two hundred fifty million dollars (\$250,000,000) or more.

67-4-3305. Supplemental information permitted.

A corporation submitting a statement required by this part may submit supplemental information that, in its sole judgment, could facilitate proper interpretation of the information included in the statement. The methods of public disclosure, as described in § 67-4-3307, of the information contained in the statements required under this part must ensure that this supplemental information be publicly available and that notification of its availability be made to a person seeking information contained in a statement.

67-4-3306. Amended tax disclosure statements required.

If a corporation files an amended Tennessee excise tax return, then the corporation shall file a revised statement under this part within sixty (60) calendar days

after the amended Tennessee excise tax return is filed. If a corporation's excise tax liability for a tax year is adjusted as the result of an audit adjustment, an informal conference decision as provided for in § 67-1-110, or a final determination of a tax lawsuit by the chancery court of the appropriate county as provided for in § 67-1-1801, then the corporation shall file a revised statement pursuant to this part within sixty (60) calendar days of the audit adjustment, decision, or final determination, as applicable.

67-4-3307. Public access to tax disclosure statements.

(a) Notwithstanding chapter 1, part 17 of this title to the contrary, the statements required under this part and filed with the secretary of state, and the information contained in those statements, are open to public inspection and disclosure under title 10, chapter 7, part 5.

(b) The secretary of state shall make all information contained in the statements required under this part for corporations filing the statements available for public inspection and disclosure on an ongoing basis in the form of a searchable database accessible through the internet.

(c) The secretary of state shall make available and establish charges that cover the cost to the state of providing copies on appropriate computer-readable media of the entire database for statements filed during each calendar year as well as hard copies of an individual annual statement for a specific corporation.

(d) A statement for a corporation for a particular tax year must not be publicly available until the first day of the third calendar year that follows the calendar year in which the particular tax year ends.

67-4-3308. Enforcing compliance.

(a) The accuracy of the statements required under this part must be attested to, under penalties of perjury, in writing by the chief operating officer of the corporation and are subject to audit by the department of revenue in the course of and under the normal

procedures applicable to Tennessee excise tax return audits conducted by the department.

(b) If a corporation doing business in this state fails to timely file a statement or files an inaccurate statement required by this part, then the secretary of state may impose a civil penalty of not more than five thousand dollars (\$5,000). If the corporation fails to file the statement within sixty (60) days after it is due, then the secretary of state may commence a proceeding in accordance with § 48-24-202 to administratively dissolve the corporation. The corporation has all remedies available under title 48, chapter 24, part 2, to apply for reinstatement or to appeal a denial of reinstatement.

(c) The secretary of state shall publish the name and penalty imposed upon a corporation subject to a penalty for failing to file the required statement or filing an inaccurate statement.

(d) The secretary of state may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to effectuate and implement this part.

SECTION 2. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. For purposes of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect January 1, 2024, the public welfare requiring it.